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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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03/29/2004

Robert J. Simmons

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EXAMINER

LUPINO, GINA M

ART UNIT

PAPER NUMBER

3652

MAIL DATE

DELIVERY MODE

11/01/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/812,749

Applicant(s)

SIMMONS, ROBERT J.

Examiner

Gina M. Lupino

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 July 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,5 and 7-9 is/are pending in the application.
- 4a) Of the above claim(s) 3,4 and 6 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,5 and 7-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over GOODACRE (U.S. Patent No. 3,268,033) in view of CERNY (U.S. Patent No. 5,644,111).

With respect to claim 1, GOODACRE discloses a machine-liftable and maneuverable, open cage-like load transporter (see Figure 1) for handling delivery of beam components during construction of a plural story structural building frame with a fork-receiving side, and an opposite, load lateral-delivery side, with:

- A worker occupancy space fully occupying the inside of a cage-like structure with a horizontal floor structure 30, 31 joined to the upwardly extending, open, and at least partially floor-perimeter 38 wall structure 32, 36, 42, and
- Disposed over the floor and walls, and above the worker volume, upwardly facing, open, horizontal, elongate, load-support deck structure (see Figure I, below) consisting of a pair of spaced apart deck structure elements that are supported by a pair of spaced apart upright supports (see Figure II, below), the deck structure:
 - having one end adjacent the load-lateral-delivery side, and an opposite end with upwardly extending load-stop riser structure,
 - capable of overhead supporting and load-carrying of elongate building-frame beam components, which are to be handled by the transporter,
 - and an open framework.

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- See Figures 1-5 and column 3, lines 19-25, 44-48.

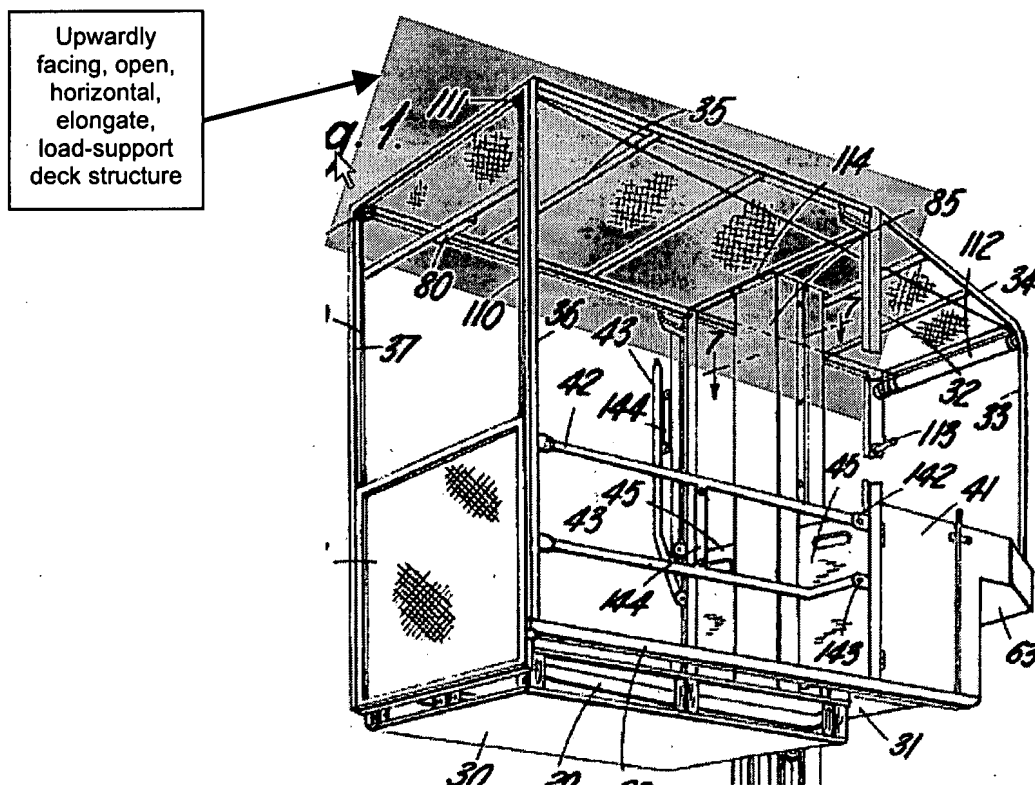


Figure I. Cage-like load transporter.

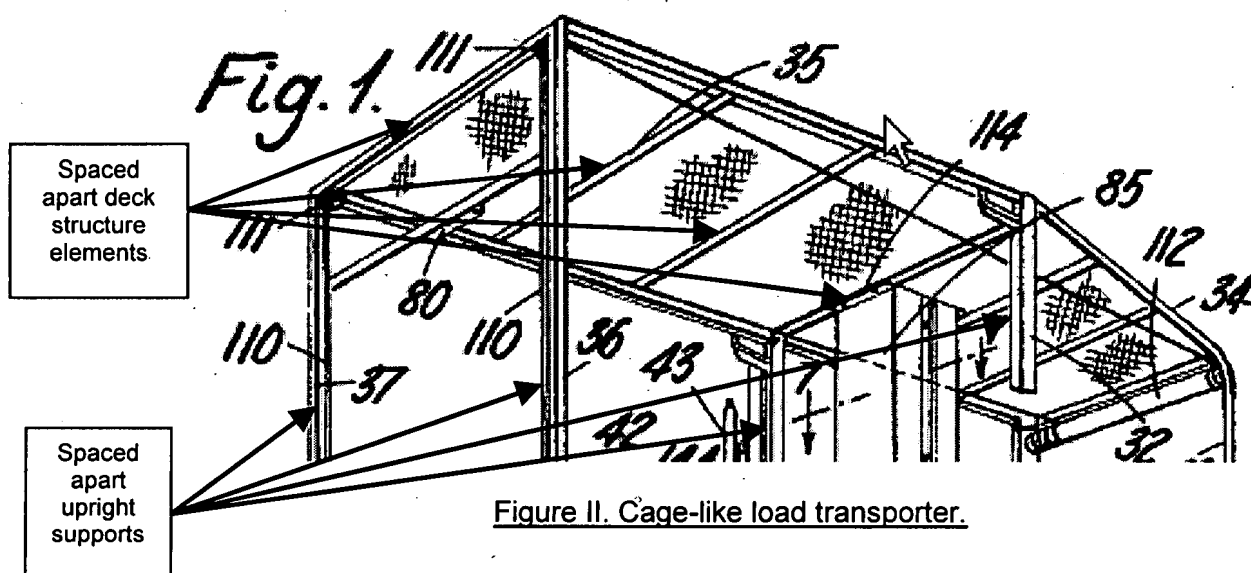


Figure II. Cage-like load transporter.

With respect to claim 7, GOODACRE teaches the transporter discussed above, where the worker space is a horizontal floor structure that extends over the entire horizontal expanse of the cage-like structure, which is joined to the wall structure. See Figure 1.

However, GOODACRE fails to teach the deck structure is open to the underlying worker occupancy volume.

CERNY teaches an elevator with an opening 23 on the ceiling of the elevator cab. Therefore, it would have been obvious to one of ordinary skill in the art to modify the ceiling deck structure of GOODACRE with an opening or hatch to facilitate a worker's access to the area above the worker occupancy volume 44.

Claims 2, 5, 8-9, are rejected under 35 U.S.C. 103(a) as being unpatentable over GOODACRE (U.S. Patent No. 3,268,033) in view of CERNY (U.S. Patent No. 5,644,111), as applied to claims 1 and 7, and in further view of THOMAS (U.S. Patent No. 2,639,051).

With respect to claims 2 and 8, GOODACRE, as modified by CERNY, discloses a transporter, as discussed above, with a building-frame-facing side and a deck structure 35, but fails to teach a deck structure equipped adjacent its one end with a deployable lateral extension which can be extended and withdrawn laterally outwardly from and inwardly toward the transporter's load-lateral-deliver side to form, when extended outwardly, a co-planar lateral extension of the load-support deck structure.

THOMAS teaches a transporter 10 with a deployable lateral extension 16, 18 which can be extended and withdrawn outwardly and inwardly with respect to the transporter's building load-lateral-delivery side. See Figures 1, 2, 4, 8, 22, 23. Therefore, it would have been obvious to one of ordinary skill in the art to further modify GOODACRE with the deployable lateral extension of THOMAS in order to form a co-planar lateral extension of the deck structure to accommodate the transport of beam components toward an installation site.

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With respect to claims 5 and 9, GOODACRE, as modified, discloses a transporter, as discussed above,

- Designed with the capability of handling generally T-shaped beam components that each may include angularly intersecting and interconnected elongate cap and stem sub-components, and
- The deck structure 35 has a pair of elongate, laterally spaced beam-like elements 36 (See Figure 5) whose long axes extend from transporter's fork-receiving side toward its load-lateral delivery side (See Figures 1-5),
- Which pair of beam-like elements 36 are capable of supporting cap sub-component in a T-shaped beam component with cap sub-component's long axis extending generally transversely of the long axes of the beam-like elements 36 in the pair, and
- Closely adjacent the load-stop riser structure,

However, GOODACRE, as modified, fails to teach a lateral extension has an elongate beam-like cross-piece which,

- with the extension deployed and extending outwardly adjacent the transporter's load-lateral-delivery side,
- is disposed to support the stem sub-component in a T-shaped beam component with the long axis of that stem sub-component extending generally transversely relative to the long axis of the cross-piece.

THOMAS teaches a transporter 10 with a deployable lateral extension 16, 18 which

- can be extended outwardly adjacent the transporter's load-lateral-delivery side and
- is capable of supporting a stem sub-component in a T-shaped beam component with the long axis of that stem sub-component extending generally transversely relative to the long axis of the cross-piece. See Figures 1, 2, 4, 8, 22, 23

Therefore, it would have been obvious to one of ordinary skill in the art to further modify GOODACRE, in view of CERNY, with the lateral extension of THOMAS in order to support a T-shaped beam component.

Response to Applicant's Arguments

Applicant's arguments entered February 8, 2007 have been fully considered.

Applicant's argument with respect to the rejection of claims 1, 2, and 5 under 35 U.S.C. 103(a) are not persuasive.

With respect to claims 1, 2, Applicant argues the Examiner has mischaracterized cited reference is missing features recited by claims 1, 2, 5, and 7, respectively. The Examiner disagrees with the Applicant.

With respect to claim 1, Applicant argues:

- the Examiner has mischaracterized element 30 of GOODACRE. However, the Examiner disagrees with the Applicant. In the discussion above, the Examiner referred to Figure 1 to denote the load transporter, as a whole, and feature 30 to denote the flat, horizontal floor structure, upon which a worker may stand when in the cage. Furthermore, the Examiner has provided Figures I and II above to clarify any misunderstanding regarding load support features recited in claim 1. Thus, since Figure 1 of GOODACRE clearly shows load-support structure, as required by claim 1, GOODACRE clearly teaches this limitation of claim 1.
- GOODACRE does not teach a worker occupancy volume because the volume of GOODACRE does not extend over the horizontal floor, but is limited to a small portion of the cage. However, the Examiner disagrees with the Applicant. Claim 1 merely requires a "worker occupancy space" that fully occupies the inside of a cage-like structure, has a floor joined to wall.

- In this case, Figure 1 of GOODACRE shows a cage-like space because it shows a structure resembling a boxlike enclosure with bars. See "cage". Dictionary.com Unabridged (v 1.1). Random House, Inc. 24 Oct. 2007. Furthermore, GOODACRE teaches this cage has a horizontal floor because it shows a horizontal bottom of this structure resembling a boxlike enclosure with bars. See "floor". Dictionary.com Unabridged (v 1.1). Random House, Inc. 24 Oct. 2007.
- Applicant also argues the volume does not fully extend over the floor, but is limited to a small portion of the cage. However, this argument is irrelevant. Claim 1 expressly recites only "a worker occupancy space fully occupying the inside of a cage-like structure with a horizontal floor structure". Claim 1 does not expressly require this volume fully extend over the floor. Even if it were amended to precisely state so, Figure 1 of GOODACRE clearly does teach this space defined by the cage fully extends over this floor. Thus, GOODACRE, in view of CERNY, teaches the limitations of claim 1, as discussed above.
- GOODACRE fails to teach a load transporter because there is nothing in GOODACRE attached to feature 30 except for the forks. However, the Examiner disagrees with the Applicant. GOODACRE clearly teaches a transporter, or a thing that is capable of transporting large or heavy loads, as expressly required by claim 1. See "transporter." Dictionary.com Unabridged (v 1.1). Random House, Inc. 24 Oct. 2007. For the inquiry regarding whether GOODACRE teaches a load transporter, it is irrelevant whether something in GOODACRE is attached to feature 30.

GOODACRE still teaches a load transporter. Thus, GOODACRE, in view of CERNY, teaches the limitations of claim 1.

- GOODACRE fails to teach a load-support deck structure because the roof denoted by features 34 and 35 is not intended to carry loads. However, the Examiner disagrees with Applicant. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Here, claim 1 requires the deck structure be load supporting. The deck structure is load supporting because it is capable of supporting loads placed upon it. Thus, GOODACRE teaches this limitation.
- GOODACRE fails to teach a load-support deck structure that is directly overhead the floor and wall structures, and above the worker occupancy volume, because there is no way for an operator to get to a load carried on the roof. However, this argument is irrelevant. The CERNY reference has been provided to show it would have been obvious to one of ordinary skill in the art to modify the ceiling deck structure of GOODACRE with an opening in order to facilitate a worker's access to the area above the worker occupancy volume, as discussed above. Thus, GOODACRE, in view of CERNY, teaches this limitation.
- CERNY does not help because claim 1 requires the deck structure be upwardly facing and open, and not just include a hatch. A hatch is a cover over an opening. See "hatch". Dictionary.com Unabridged (v 1.1). Random House, Inc. 24 Oct. 2007. CERNY teaches a hatch, but it also teaches a hatch to cover an opening in a ceiling. Thus, GOODACRE, in view of CERNY, teaches this limitation, as discussed above.

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- GOODACRE, in view of CERNY, fail to teach a "deck structure". However, the Examiner disagrees with Applicant. Figure 1 of GOODACRE teaches a structure with a floor or a roof surface composed of decking units, or units formed of material in the form of self-supporting flooring or roofing units laid between joists or rafters. See "deck" and "decking". Dictionary.com Unabridged (v 1.1). Random House, Inc. 24 Oct. 2007. Thus, GOODACRE teaches this limitation.
- GOODACRE's deck structure is not open to the underlying worker occupancy volume. Thus, the Examiner has provided the CERNY reference to show that it would have been obvious to one of ordinary skill in the art to modify the ceiling deck structure of GOODACRE with an opening, as in CERNY, in order to create facilitate a worker's access to the area above the worker occupancy volume.
- The cage of GOODACRE is not intended to carry a load because it would not constitute a safe manner of using the invention. However, as discussed above, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Here, the structure in GOODACRE is capable of carrying a load. The safety inquiry is irrelevant. Claim 1 merely requires the structure is capable of carrying a load, and GOODACRE teaches this limitation, as it is plainly recited.

With respect to claim 2, Applicant argues GOODACRE, in view of THOMAS, fails to teach or suggest a deployable lateral extension that is co-planar with the load-support deck structure. However, the Examiner disagrees with the Applicant. Claim 2 only requires a co-planar lateral extension of the deck structure, and that this lateral extension is co-planar with the

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deck structure. THOMAS clearly teaches an extension that can be deployed laterally from a deck structure. THOMAS also shows at least one part of this extension that is co-planar with at least one part of the deck structure. There are no additional limitations expressly recited in claim 2 regarding exactly which part of the extension is co-planar with a particular part of the entire deck structure. Absent any further claim limitation indicating directing which part of the deck structure and which the lateral extension must be coplanar, GOODACRE, in view of THOMAS, clearly teaches these limitations.

With respect to claim 5, Applicant argues the cited references fail to teach or suggest a pair of elongate, laterally spaced beam-like elements that extend along the "length" of the transporter because the beams of GOODACRE cannot extend horizontally between the ends of the transporter. However, the Examiner disagrees with the Applicant. Claim 5 contains no additional, expressly, plainly recited limitations regarding the relative terms "extend" and "the length of the transporter". Figure 1 of GOODACRE clearly shows a pair of beam-like elements that are elongate and laterally spaced with respect to one another. Furthermore, Figure 1 of GOODACRE shows these beams extend along a length of the transporter. Thus, GOODACRE teaches these limitations of claim 5, as expressly written.

With respect to claim 7, Applicant argues GOODACRE fails to teach a horizontal floor structure that extends over the entire horizontal expanse of the cage-like structure. However, the Examiner disagrees with the applicant, the same reasons discussed above with respect to claim 1, specifically with respect to the same arguments in support of this same limitation recited in claim 1.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a). A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gina M. Lupino whose telephone number is (571) 272-6577. The examiner can normally be reached on Monday - Friday, 9:00 AM - 5:30 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saul Rodriguez can be reached on (571) 272-7097. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

GML


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